



PATENT
674509A-2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : SPARSØ ET AL.
U.S. Serial No.: 10/699,201
Filed : OCTOBER 31, 2003
For : PROCESS FOR CONTROLLING THE FATTY ACID CHAIN
COMPOSITIONS OF TRIGLYCERIDES AND THE USE THEREOF
Art Unit : 1621
Examiner : CARR

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New York, NY 10151

EXPRESS MAIL

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Date of Deposit: September 20, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop: ISSUE FEE
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Charles Jackson
(Typed or printed name of person mailing paper or fee)

Charles Jackson
(Signature of person mailing paper or fee)

INFORMATION DISCLOSURE STATEMENT

Mail Stop Issue Fee
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P.O. Box 1450
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Sir:

The Examiner's attention is respectfully directed to the documents listed on the enclosed PTO-1449, copies of which are enclosed herewith.

This information disclosure is not a representation that the cited document is considered pertinent, or that the cited documents are indeed prior art. And, it is believed that the document cited herein presents no new issues requiring any further search or examination.

It is respectfully requested that the Examiner consider and make of record the documents herein cited and that a copy of Form PTO-1449 be initialed by the Examiner and returned to the undersigned. To the extent that a Petition is required for entry, this paper is to serve as such.

As this Information Disclosure Statement is being filed concurrently with the payment of the issue fee, the Commissioner is authorized to charge any required fees or credit any overpayment in fees to Deposit Acct. No. 50-0320.

And, in this regard, it is noted that the Rules and the MPEP do not prohibit the Examiner from considering and making of record documents cited at this stage of the prosecution.

37 C.F.R. § 1.97(i) provides that after the Notice of Allowance, the applicant does not have a right to have references cited in an IDS considered.

However, if an IDS filed after the Notice of Allowance is received by an Examiner, and (s)he decides (1) to consider each document, (2) initial the IDS to indicate that (s)he has done so and (3) the documents cited are to appear on the front of the patent, there is nothing in 37 C.F.R. § 1.97(i) to prevent her/him from doing so, as is respectfully requested in this application. *See also* 37 C.F.R. §§ 1.181-1.183; namely that acceptance of this Information Disclosure Statement by the Examiner can be within 37 C.F.R. §§ 1.181-1.183, especially because non-acceptance of it can result in the Applicants requesting continued prosecution which can cause a loss of patent term.

The actions of the Examiner in considering the document cited herein are consistent with the defined mission of the USPTO to help applicants get valid and enforceable patents on their Inventions. *See, e.g.*, 1998 USPTO Annual Report by then Commissioner Bruce A. Lehman available on the USPTO website at <http://www.uspto.gov/web/offices/com/annual/1998/a98r-2.htm#Topic11>, "The mission of the patent business area is to help our customers get patents; its performance goal is to grant patents to inventors for their discoveries."

And if in considering a document in an IDS filed after a Notice of Allowance, an Examiner determined that the document would establish a *prima facie* case of unpatentability of an allowed claim, the Examiner has authority to withdraw the Notice of Allowance, reopen the prosecution of the application and reject the claim on the recently cited document.

Indeed, 37 C.F.R. § 1.313(a) provides that “[a]pplications may be withdrawn from issue for further action at the initiative of the” USPTO. 37 C.F.R. § 1.313(b) further provides that the USPTO can withdraw an application from issue after payment of the issue fee due to, *inter alia*, unpatentability. Section 1308 of the MPEP provides that:

An application may be removed from the Office of Patent Publication, without it being withdrawn from issue under 37 CFR 1.313(b), **to permit the examiner to consider an information disclosure statement** or whether one or more claims are unpatentable. Only if such consideration results in a determination that one or more claims are unpatentable does 37 CFR 1.313(b) authorize the application to be withdrawn from issue. [emphasis added]

Thus, 37 C.F.R. § 1.97(i) does not prohibit the Examiner from considering an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98, such as an IDS after allowance that may not comply with 37 C.F.R. §§ 1.97 and 1.98. Rather, 37 C.F.R. 1.97(i) is a procedural safeguard that prevents Applicants from expecting or insisting upon consideration of an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98. And, in fact, as the application is now electronic, consideration of such an Information Disclosure Statement does not require the physical removal or transfer of the application itself, thereby simplifying the process and reducing any hardship on the Examiner.

Therefore, it is respectfully requested under all of the Rules, including 37 C.F.R. §§ 1.181-1.183 that the documents cited herein be considered and made of record. The Examiner is invited to contact the undersigned by telephone at (212) 588-0800 should there be any questions.

Respectfully submitted,
Attorneys for Applicant

By: 

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Based on Form PTO-1449 (3/90) LIST OF REFERENCES CITED BY APPLICANT (Use several sheets if necessary)	ATTY. DOCKET NO. 674509A-2001	SERIAL NO. 10/699,201
	APPLICANT SPARSØ	
	FILING DATE October 31, 2003	GROUP 1621

U.S. PATENT DOCUMENTS							
EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	AA						
	AB						
	AC						
	AD						
	AE						
	AF						
	AG						
	AH						
	AI						
	AJ						
	AK						

FOREIGN PATENT DOCUMENTS								
		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
							YES	NO
	AL	03/029392	4/10/03	WO				
	AM							
	AN							
	AO							
	AP							

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)			
	AQ		Erciyes and Civelekoglu. "On the Molecular Distillation of Some Triglyceride Oils of Turkish Origin." Chimica Acta Turcica 1983; 11:191-99.
	AR		
	AS		
	AT		
	AU		
	AV		
EXAMINER		DATE CONSIDERED	
* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.			